

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JANICE NOTTENKAMPER, derivatively :
on behalf of ITT EDUCATIONAL : C.A. No. 14-672-GMS
SERVICES, INC., :
:
Plaintiff, :
:
v. :
:
KEVIN M. MODANY, DANIEL M. :
FITZPATRICK, JOHN F. COZZI, JOHN :
E. DEAN, JAMES D. FOWLER, JR., :
JOANNA T. LAU, THOMAS I. :
MORGAN, SAMUEL L. ODLE, VIN :
WEBER, JOHN A. YENA and LLOYD G. :
WATERHOUSE, :
:
Defendants, :
:
and :
:
ITT EDUCATIONAL SERVICES, INC., :
:
Nominal Defendant. :

the alternative, to stay this action pending the outcome of the securities fraud class action (“Motion to Transfer or Stay”).

On January 13, 2015, Defendants filed an opening brief in support of their Motion to Transfer or Stay. (D.I. 12) On February 5, 2015, this Court entered an Order amending the parties’ stipulated briefing schedule. (D.I. 21) Pursuant to that Order, plaintiff’s answering brief was due no later than February 19, 2015. (*Id.*) As of the date of this reply, four days following the Court-ordered deadline, plaintiff has not filed an answering brief in response to Defendants’ Motion to Transfer or Stay.

By failing to file a brief in accordance with the Court-ordered deadline, plaintiff has waived any arguments in response to Defendants’ Motion to Transfer or Stay. *See Stackhouse v. Mazurkiewicz*, 951 F.2d 29, 30 (3d Cir. 1991) (noting that there are instances “where the failure of a party to oppose a motion will indicate that the motion is in fact not opposed, particularly if the party is represented by an attorney”); *Aiello v. Zisa*, 2010 WL 421081, at *5, n.8 (D.N.J. Feb. 2, 2010) (“Plaintiffs’ counsels’ failure to respond [to an argument] prevents Defendant from filing a meaningful reply. The adversarial system requires courts to respect the strategic choices made by parties’ counsel.”). As such, Defendants respectfully request that the Court enter an order, in the form attached hereto, transferring this action to the Honorable J. Paul Oetken, United States District Judge for the Southern District of New York, who is presiding over the related actions *In re ITT Educational Services, Inc. Securities Litigation*, No. 13-cv-1620 (S.D.N.Y.) and *Wilfred v. Modany, et al.*, No. 13-cv-3110 (S.D.N.Y.).

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